IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10333 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ASHOKBHAI THARUMAL TAGLANI (SINDHI)

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR HH PATEL for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 26/02/2001

ORAL JUDGEMENT

#. Heard the learned counsel for the parties.

#. Only on one contention this petition deserves acceptance and as such it is not necessary to refer, discuss and decide on all other contentions raised by the learned counsel for the petitioner.

#. Under the order dated 18-9-2000 of the District Magistrate, Kheda at Nadiad the petitioner was detained

as a bootlegger.

#. The petitioner in his representation made to the detaining authority on 22-9-2000 in para-5 thereof made a complaint that copies of statements of witnesses recorded under section 161 of Cr.P.C. in the criminal complaint, reference of which has been made therein and which are made basis for his detention have not been supplied to the petitioner by the detaining authority. He reiterated this grievance in this court also and reference here may have to para (n) of the special civil application.

#. Reply to the special civil application has not been filed by any of the respondents and as such the factual averments made by the petitioner in para (n) of the special civil application stand uncontroverted.

#. Shri H.H. Patel, on the basis of the record which is available with him submitted that the copies of the documents which have been prayed by the petitioner to be supplied to him have been given to him. He made reference to the document, a letter of the District Magistrate. However, on putting by the Court he is unable to show any proof that the copies which were alleged to have been sent to him of the documents were received by the petitioner. If it would have been a fact, what it is stated by the counsel for the respondents, I fail to see why District Magistrate has not filed affidavit-in-reply to the special civil application. This matter was admitted on 4-10-2000 and he had more than sufficient time to file reply to the special civil application in case what he stated is correct. From the fact that he has not filed reply, this document appears to be a concocted and manufactured document placed on the record by the District Magistrate. Not only this, the State of Gujarat has also not cared to file reply to the special civil application. If only on the basis of documents, reference of which has been made on the record, without there being any affidavit of the detaining authority, decision is given, then it is very risky in these days.

#. It is a clear case where the petitioner has been denied of his right of making effective representation against the detention order as conferred upon him under Article 22(5) of the Constitution of India.

#. In the result, this petition succeeds and the same is allowed. The order of detention of the petitioner dated 18-9-2000 is quashed and set aside. The petitioner Ashokbhai Tharumal Taglani (Sindhi) the detenu, at

present in Vadodara Jail, Vadodara be set at liberty forthwith, if he is not required in any other case. Rule is made absolute. The State of Gujarat is directed to pay Rs.5000/- as costs of this petition to the petitioner. This amount of costs has to be recovered from the officer concerned who is responsible for not filing reply to the special civil application. The Chief Secretary of the State of Gujarat is directed to hold an inquiry in the matter and complete the same within two months and report the same to the court after recovering this amount of costs from the concerned officer.

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